IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16788 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAKHU VIRA AYAR - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR AG JOSHI for Petitioner(s) : 1,MR AM PAREKH for Petitioner(s) : 1,
MR NIRAJ SONI, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 04/07/2007

ORAL JUDGMENT

Rule. Mr. Niraj Soni, Ld. AGP waives service of rule on behalf of respondents. At the request of learned advocates for the parties, matter is

taken up for final hearing today.

2. The sole grievance of the petitioner is that though his revision application filed before the Joint Secretary, Food & Civil Supplies, Government of Gujarat i.e., respondent no. 1 challenging the order of respondent no. 2 dated 28/4/2006 whereby the licence granted in favour of the petitioner to run the fair price shop has been cancelled, is pending for final disposal, the stay of the impugned order of the Collector i.e., respondent no. 2 which was initially granted, has been vacated by respondent no. 1 by order dated 25/6/2007. It transpires from the petition that the petitioner has been running fair price shop for the last 45 years. However, upon inspection carried out on 9/3/2006 by respondent no. 3, certain irregularities were found. In view of the same, the licence was initially suspended for 90 days by order dated 11/3/2006. Against the said order, the petitioner preferred appeal. But respondent no. 1 issued show cause notice calling upon the petitioner to explain why his licence should not be cancelled. Ultimately by order dated 3/10/2006 respondent no. 3 cancelled the licence to run fair price shop. Against the said order, the petitioner preferred appeal being Appeal No. 8 of 2006, which was dismissed by respondent no. 2 vide order dated 6-7/3/2007. Against the same, revision application has been preferred before respondent no. 1. By order dated 22/5/2007 respondent no. 1 stayed the order cancelling the licence of the petitioner for one month and fixed the hearing of the case on 22/6/2007. While passing the said order i.e., order dated 22/5/2007 respondent no. 1 kept in view

the averments made in the application praying for stay that the petitioner was aged 70 years and that there were certain technical irregularities. However, by subsequent order dated 25-26/6/2007 respondent no. 1, after hearing the learned advocates for the petitioner, vacated the stay observing that prima-facie there were no good grounds for grant of stay. Hence, this petition.

3. I have heard Mr. AM Parekh, learned advocate for the petitioner and Mr. Niraj Soni, Ld. AGP for respondents. It is submitted by Mr. Parekh that when initially the stay was granted, there was no reason for respondent no. 1 to vacate it on a later date even when the revision application is pending. Mr. Soni has, however, tried to support the said order.

4. Having heard the learned advocate for the parties and having perused the record of this petition, it clearly appears that in order dated 22/5/2007 respondent no. 1 after perusing the contents of the application found that the prayer for stay of the order of Collector dated 28/4/2006 was justified and, therefore, respondent no. 1 granted stay for one month. In the subsequent order dated 25-26/6/2007, though it transpires that the learned advocates for the petitioner were heard, respondent no. 1 has vacated the stay without assigning any reason. It also appears that there was no change of circumstances to alter the order dated 22/5/2007. It is also often observed by this Court in its decisions that when the proceedings in the nature of judicial proceedings or quasi-judicial proceedings are pending before the adjudicating authority, normally it should stay the order impugned in the said proceedings. In respondent no. 1's order

dated 25-26/6/2007 no reasons appear why the usual practice has not been followed. In view of the same, the said order deserves to be quashed and set aside and it is hereby quashed and set aside. The impugned order of the Collector dated 28-29/4/2006 cancelling the licence of the petitioner is stayed till final disposal of the revision application pending before respondent no. 1. The petition is allowed. Rule made absolute with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.